EESWARI VISUVALINGAM

v.

THE GOVERNMENT OF MALAYSIA

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID OMAR LP
HASHIM YEOP SANI CJ (MALAYA)
LEE HUN HOE CJ (BORNEO)
MOHD. AZMI SCJ
MOHD. YUSOFF MOHAMED SCJ
[CIVIL APPEAL NO. 500/1988]
7 NOVEMBER 1989

PUBLIC AUTHORITIES: *Pension - Claim by widow - Husband's conversion prior to death - Widow's rights under the Act & Regulations - Validity of civil law marriage - Whether widow is "dependent" - Civil laws - Application irrespective of religion.*

The appellant married Visuvalingam s/o Ponniah according to Hindu rites and the said marriage was registered on 15 November 1950. On 16 July 1978 Visuvalingam s/o Ponniah embraced Islam and adopted the name of Abd. Hamid bin Abdullah. The appellant did not embrace Islam. Visuvalingam s/o Ponniah was a pensioner when he died on 7 January 1985.

The appellant sought a declaration that she was a "dependant" as defined in s. 4 of the Pension Adjustment (Amendment) Act 1983 and also a declaration that she was entitled to a derivative pension under s. 15 of the Pensions Act 1980.

Held:

[1] There is no evidence that the marriage has been dissolved. Therefore the appellant is suing as a widow under the pensions law. The fact that her husband had converted to Islam does not effect the appellant's rights under the Pensions Act and Regulations.

[2] Since the appellant's marriage remained valid under the civil law at the time of the death of Visuvalingam s/o Ponniah, she is therefore a dependant under the pension law and is entitled to a derivative pension.

[3] The Pensions Act and Regulations are civil laws of general application and if a person is entitled under the Act, that person is entitled, regardless of whether he is a Muslim or non-Muslim.

[Appeal allowed and declaration ordered accordingly.]

Cases referred to:
Farooq Leivers v. Adelaide Bridget Mary PLD [1958] (WP) Lahore 431
Che Omar bin Che Soh v. PP [1988] SCR 73

Legislation referred to:
Law Reform (Marriage and Divorce) Act 1976, s. 4
Pensions Act 1980, ss. 15, (1)(a)
Pensions Adjustment (Amendment) Act 1983, s. 4
Registration of Marriages Ordinance 1952, s. 18

JUDGMENT

Hashim Yeop Sani CJ (Malaya):

The appellant in her statement of claims dated 30 June 1986 sought for a declaration from the High Court, Kuala Lumpur that she was a "dependant" as defined in s. 4 of the Pensions Adjustment (Amendment) Act 1983 and also a declaration that she was entitled to a derivative pension under s. 15 of the Pensions Act 1980.

In the statement of defence the respondent contended that the appellant was not a "widow" under the pension laws as claimed because "she did not convert to Islam within 3 months of her husband's conversion". This defence was obviously based on a fatwa as given in the affidavit of the Mufti, Wilayah Persekutuan in which the Mufti stated that:

> I hereby state that according to Muslim law, if a married man embraces Islam but his wife fails to convert to Islam the marriage in question ceases to subsist on the date of the husband's conversion.

At the commencement of the hearing in the High Court parties arrived at the following agreed facts:

(1) appellant married Visuvalingam s/o Ponniah according to Hindu rites and the said marriage was registered on 15 November 1950.

(2) Visuvalingam s/o Ponniah embraced Islam on 16 July 1978 and adopted the name of Abd. Hamid bin Abdullah.

(3) Visuvalingam s/o Ponniah was a pensioner under the Pensions Act 1980.

(4) Visuvalingam s/o Ponniah died on 7 January 1985.

(5) By a letter of 7 March 1986 the plaintiff applied to the Public Services Department for derivative pension.

(6) On 16 April 1986 the Pensions Department rejected the plaintiff's application on the same grounds as stated in the statement of defence.

The registration of the said marriage on 15 November 1950 was under the Hindu Marriage Registration Enactment (Cap. 112). This Enactment was repealed by the Registration of Marriages Ordinance 1952 but s. 18 of the Ordinance saved the registration.

Section 4 of the Law Reform (Marriage and Divorce) Act 1976 provides that nothing in that Act shall affect the validity of any marriage solemnised under any law, religion, custom or usage prior to the appointed date and such marriage, if valid under that law, religion, custom or usage shall be deemed to be registered under the Act. That Act also provides that every such marriage shall continue until dissolved by the death of one of the parties or by order of a Court of competent jurisdiction or by a decree of nullity made by a Court of competent jurisdiction.

The issue before the High Court was as stated in the summons-in-chambers dated 8 June 1987 for the Court to deal with the question under O. 33 of the Rules of the High Court 1980:

> whether the non-conversion of the plaintiff from her religion to that of Islam within 3 months of the conversion to Islam of her spouse dissolves the marriage between the plaintiff and her husband and thereafter disentitles her from being a "dependant" within the definition contained in s. 4 of the Pensions Adjustment (Amendment) Act 1983 and to a pension under s. 15 of the Pensions Act 1980.

First we must make it clear that we are not dealing with the question whether the appellant was entitled to any part of the estate of a deceased Muslim. We are only dealing with the question whether, following the question asked, she is entitled to a derivative pension under a particular law on pensions.

The word "dependant" is defined in s. 4 of the Pensions Adjustment Act 1980 as follows:

> "dependant" means a widow, widower, child, mother or father of a deceased officer.

The word "widow" is defined in the Pensions Regulations 1980 as follows:

> "widow" or "widower" means the surviving spouse of a deceased officer **whose marriage is recognized in Malaysia as a valid marriage under any written law, religion, custom or usage.** (Emphasis provided)

Section 15(1)(a) of the Pensions Act 1980 provides for derivative pension to persons prescribed in the Regulations.

The answer to the question posed is therefore straight forward. There is no evidence that the marriage has been dissolved. The appellant is therefore suing as a widow as defined under the pensions law. The fact that her husband had converted to Islam does not in our view affect the appellant's rights under the Pensions Act and Regulations.

In *Farooq Leivers v. Adelaide Bridget Mary PLD* [1958] (WP) Lahore 431 the plaintiff, a non-Muslim converted to Islam, asked the defendant to study the Islamic religion and embrace Islam but she refused. The plaintiff, realising that there was no chance of a reconciliation, divorced the defendant by pronouncing the Islamic formula of *talak*. The learned Judge there realised that as the plaintiff had embraced Islam he at once became subject to Muslim personal and religious laws. But the more difficult question in such cases was what was the effect of the conversion on other persons who have some rights vested in them before the conversion. In that case the learned Judge held that:

> On the one hand under the Muslim law, a Christian husband, on his conversion to Islam, is authorised to give *talak* to his Christian wife by pronouncing the formula of *talak*, but on the other hand, the Courts in Pakistan cannot recognize such a *talak* in view of the provisions of the Divorce Act of 1869 and other existing laws. In such a conflict of the personal law of the parties to the suit, there does not appear to be any justification to prefer the personal law of the plaintiff to the personal law of the respondent.

In our case here the law applicable to the appellant had always been her own personal laws and the civil laws of the country. See also *Che Omar bin Che Soh v. PP* [1988] SCR 73.

Since the appellant's marriage remained valid under the civil law at the time of the death of Visuvalingam s/o Ponniah, she is therefore a dependant under the pension law and is entitled to a derivative pension.

The Pensions Act and Regulations are civil laws of general application and if a person is entitled under the Act, that person is entitled, regardless of whether he is a Muslim or a non-Muslim. For the purpose of the pensions law the appellant is certainly a widow (or one of the widows) of the deceased.

Mr. Segara, Senior Federal Counsel, who appeared for the respondent had elected not to make any submission before us and relied solely on the decision of the learned trial Judge.

We accordingly allowed the appeal and ordered that the appellant be entitled to the declarations sought.

a After hearing arguments on costs we decided not to make any order as to costs and that parties shall bear their own costs.

Also found at [1990] 1 CLJ 426

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